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No. 05-915

IN THE
Supreme Court of the United States

CRYSTAL D. MEREDITH, CUSTODIAL PARENT
AND NEXT FRIEND OF JOSHUA RYAN MCDONALD,
Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, *et al.*,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit**

BRIEF *AMICI CURIAE* OF THE LOUISVILLE AREA CHAMBER OF COMMERCE, INC. (D/B/A GREATER LOUISVILLE INC.) AND LOUISVILLE METRO MAYOR JERRY E. ABRAMSON IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

Amici curiae will address the following questions:

1. Does the student assignment plan, adopted by the Jefferson County Board of Education after considering extensive local community and educator input, and as affirmed by the courts below, satisfy the Equal Protection Clause of the Constitution, given, among other things, the Board's conclusion that its plan for maintaining racial diversity in secondary education furthers compelling goals, such as preparing students to succeed in the racially diverse workforce of the Louisville, Kentucky – Southern Indiana metropolitan area?

2. Do concerns of federalism and institutional competence counsel for a federal court to defer to this decision of a locally elected and accountable school board?

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The Louisville Area Chamber of Commerce, Inc. d/b/a Greater Louisville Inc. ("GLI") and Mayor Jerry E. Abramson file this brief *amici curiae* in support of respondents.[1] The purpose of this brief is twofold: first, to

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[1] Pursuant to Supreme Court Rule 37.6, *amici* disclose that no counsel for any party authored any portion of this brief and no person or entity other than *amici* made any monetary contribution to the preparation or submission of this brief. *Amici* have the consent of

explain the importance of racial diversity to Jefferson County Public Schools ("JCPS" or the "Board") for preparing students to succeed in the greater Louisville workforce and thereby strengthen the local business community; and second, to emphasize the need, based on principles of federalism and institutional competence, for the federal judiciary to defer to local public school officials in their fashioning of practical solutions, based on extensive community and educator input, for promoting racial diversity in their public elementary and secondary schools.

INTEREST OF AMICI CURIAE

GLI, a not-for-profit organization established in September, 1997, functions as the chamber of commerce and economic development agency for the Louisville, Kentucky – Southern Indiana metropolitan area. GLI has a membership of approximately 2,900 businesses and other employers, ranging from small local businesses to large multinational companies. GLI has a deep interest in public education because GLI understands that well-educated workers are an essential component for a community's prosperity.[2] An educated workforce will help attract and maintain good-paying jobs in the greater Louisville region. Based on this understanding, GLI is engaging in various

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the parties to file this brief. The parties' letters of consent were filed with the Court on June 26 and 28, 2006.

[2] *See* Brookings Institution Center on Urban & Metropolitan Policy, *Beyond Merger: A Competitive Vision for the Regional City of Louisville* (2002) (noting the importance of increasing educational achievement of students at levels in Louisville, particularly those who are lowest-achieving). GLI has formed a task force to establish "a community that values education [and] where no priority outranks education." *See Greater Louisville Inc. Partnership for Education* (2006), available at *http://www.greaterlouisville.com/ed/pforedu.asp.*

activities to promote education in Jefferson County, Kentucky, where Louisville is located. For example, GLI developed and is implementing the "Every 1 Reads" project – a special initiative to enhance children's overall reading level by 2008. This Court's ruling on the constitutionality of JCPS's student assignment plan will affect GLI's substantial interest in education because of the impact of local public school policies on GLI's efforts to promote healthy and robust economic development in greater Louisville.

Since January of 2003, Mr. Jerry E. Abramson has been the Metro Mayor of the recently merged City-County government known as Louisville Metro. He also served three terms as Mayor of the City of Louisville – the longest serving mayor in the City's history – prior to its merger with the government of Jefferson County. In addition, Mayor Abramson has served as president of the United States Conference of Mayors. As Metro Mayor, Mr. Abramson's responsibilities include promoting quality education for all children in Louisville Metro and securing healthy economic development for the community. The Mayor has a substantial interest in this Court's ruling because it will affect Louisville Metro's efforts to foster quality public education and thereby help attract new business and promote the growth of existing companies in the metropolitan area.

STATEMENT

The student assignment plan at issue here should be considered within the context of the history of Louisville. This history underscores the importance of racial diversity and healthy racial relations for fostering economic growth of the City.

"Louisville has always been called the gateway from the North to the South," Isabel M. McMeekin, *Louisville: The*

Gateway City 256 (1946), and is referred to by many as the "northernmost Southern city and southernmost Northern city in the United States." Indeed, "Louisville's personality has been shaped" in large part by "its border-city status" – "its neither southern-fish nor northern-fowl location on the Kentucky-Indiana border." Bob Hill & Dan Dry, *Louisville: A River Serenade* 13 (1995).

Louisville has historically been and remains the largest city in Kentucky, the state that was the birthplace of Abraham Lincoln and one of the "border States" that never joined the Confederacy during the Civil War. *See* John E. Kleber, ed., *The Kentucky Encyclopedia* 555-56, 576 (1992). Louisville always remained a Union stronghold throughout that conflict. *See id.* at 576. However, during the late nineteenth and much of the twentieth century, Louisville, like many other cities, suffered from racial segregation. *See, e.g., Buchanan v. Warley*, 245 U.S. 60 (1917) (striking down a Louisville ordinance requiring residential segregation). Indeed, it is said that the name "Jim Crow" had its origin from a minstral show character "inspired by an elderly Negro in Louisville." *The Origin of "Jim Crow"*, in *Afro-American Almanac*, available at *http://www.toptags.com/aama/docs/jcrow.htm*. Racial relations deteriorated, and "[l]ike other cities, Louisville saw unrest in the 1960s over civil rights and in the 1970s over busing." Ellen R. Stapleton, "Police Shooting Aggravates Racial Tensions in Ky.," *The Boston Globe* (Jan. 16, 2004), available at *http://www.boston.com/ news/nation/articles/2004/01/16*. This same period of societal unrest saw Louisville and Jefferson County's population shrink and its economy suffer.

Since the 1980s, however, Louisville has transformed itself. It is now home to the corporate headquarters or substantial manufacturing facilities for many Fortune 500 companies, as well as the Worldport air hub for UPS. The

City also has major health care and medical sciences industries, and its medical facilities have produced important breakthroughs in heart and hand surgery as well as cancer treatment. This industry development has led to significant population and economic growth.

Along with economic development has come greater diversity among the citizenry. The city that has always been an amalgam of North and South has become home to an even greater mix of different peoples. Although racial minorities other than African-Americans are still a small percentage of JCPS students, the City has become more racially diverse and home to an increasing number of immigrants from around the world.[3] It is also more culturally and religiously diverse than many other cities situated south of the Mason-Dixon line. The City has strong Catholic, Jewish and Protestant communities and is the hometown of one of the most famous Americans of the Islamic faith, former heavyweight boxing champion Muhammad Ali. *See The Kentucky Encyclopedia, supra,* at 12, 460, 576, 766.

With the recent merger of its City and County governments, the new Louisville Metro is, by one estimate, "now the 16th largest city in the nation." Pet. App. C-11. Its public school district, the Jefferson County Public Schools ("JCPS"), is "the 28th largest public school system in the United States." *Id.*

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[3] In 1990, approximately 665,000 of Jefferson County's population was comprised of 81% non-Hispanic origin whites and 19% of non-whites. U.S. Census Bureau, *Census 2000*, available at *http://factfinder.census.gov.*. By 2004, non-whites accounted for 25% of the population. U.S. Census Bureau, *State & County Quick Facts*, available at *http://quickfacts.census.gov/qfd /states/21/21111.html.*

Louisville's public schools were subject to a federal court-ordered student assignment plan from 1975 until 2000, when the same federal district judge who heard the present case below (Chief Judge John G. Heyburn II) dissolved the original desegregation decree. In his 2000 decision, Chief Judge Heyburn "ordered JCPS to cease using racial quotas at Central High School, and ordered JCPS to complete any reevaluation and redesign of the admissions procedures in other magnet schools before the beginning of the 2002-2003 school year." *Id.* C-15, C-16. In compliance with this order, "the Board ended its use of racial quotas" at certain schools as directed by the federal court, but "determined that the Court's order did not address the use of race at magnet traditional schools." *Id.* C-16, C-17. The Board then embarked on an in-depth process to investigate the local community's view and needs and received considerable "public feedback from opinion surveys and community meetings." *Id; see also* Stipulation of Facts ¶ 135, reprinted at J.A. 58. Based upon extensive study and constituent input, the Board adopted in 2001 the student assignment plan at issue here – what is commonly referred to as the "2001 Plan."

Chief Judge Heyburn held that the 2001 Plan comported with the Equal Protection Clause, with the exception of the admissions process for those magnet schools offering "traditional" programs. See Pet. App. C-75, C-76. The Board did not appeal the district court's judgment and revised the 2001 Plan to comport with the district court's ruling. Petitioner appealed portions of the 2001 Plan upheld by the district court. Petitioner's appeal was rejected by the United States Court of Appeals for the Sixth Circuit, which adopted Chief Judge Heyburn's opinion *in toto*. The student assignment plan at issue before this Court, therefore, is the 2001 Plan as modified by Chief Judge Heyburn's ruling. As explained below, GLI and Mayor Abramson support the

portions of the 2001 Plan upheld in the courts below and request that this Court affirm the Sixth Circuit's decision.

ARGUMENT

I. JCPS HAS A COMPELLING INTEREST IN MAINTAINING RACIALLY INTEGRATED SCHOOLS BECAUSE, AMONG OTHER THINGS, THEY PREPARE STUDENTS FOR DIVERSITY IN THE WORKPLACE AND THEREBY CONTRIBUTE TO THE COMMUNITY'S ECONOMIC DEVELOPMENT

GLI and Mayor Abramson support JCPS's student assignment plan as modified by the courts below because it effectively achieves a racially balanced public school system, which in turn benefits the local community by preparing students for a racially diverse workforce.

This Court has recognized that public educational institutions have a compelling interest in preparing students for an increasingly diverse workplace. *See Grutter v. Bollinger*, 539 U.S. 306, 330-31 (2003) (noting that "the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints" and citing *Plyler v. Doe*, 457 U.S. 202, 221 (1982) and *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954), as evidence that the Court has "repeatedly acknowledged the overriding importance of preparing students for work and citizenship"). By referring to these landmark K-12 education decisions, this Court tacitly recognized that a compelling interest in racial diversity could be advanced for elementary and secondary schools as well as institutions of higher learning. *See* Lisa J. Holmes, *After Grutter: Ensuring Diversity in K-12 Schools*, 52 UCLA L. Rev. 563, 591-92 (2004).

JCPS students receive significant benefits from the school district's racially integrated classes. Many experts agree that racially diverse environments in K-12 schools will contribute to students' "enhanced learning, higher educational and occupational aspirations, and social interaction among members of different racial and ethnic backgrounds . . . ." (Def. Ex. 72 at 115-16) (citing research). Indeed, as Dr. Gary Orfield, Professor of Education and Social Policy at Harvard University and Co-Director of the Harvard Civil Rights Project, testified, desegregated schools have "strongly positive effects for [both minority and white] students . . . in terms of what kind of life you have after school, whether you go to college, whether you finish college, what kind of employment you have [and] how you live and work in communities." J.A. 140.

The record reflects research supporting these experts' views:

- More than 80 percent of both white and black high school juniors in Jefferson County surveyed answered that their racially diverse public school experience "had helped them learn how to work and relate to students from other groups." J.A. 146.

- Ninety-seven percent of the 1997 JCPS graduates surveyed by the University of Kentucky agreed that "it is important for [their] long-term success in life that schools have students from different races and backgrounds in the same school." J.A. 134.

- Eighty-nine percent of the 1997 JCPS graduates surveyed by the University of Kentucky felt that JCPS prepared them to work in the workplace with racially different people. J.A. 135.

These data confirm that students are receiving significant benefits from JCPS's racial diversity. For example, they are better prepared for their future racially diverse work environment. As Patricia Todd, JCPS's Executive Director for Student Assignment, testified, "We believe that in order to prepare our kids for work in our community or any other community, they are largely going to be encountering diverse work places, and so we feel like there is a social benefit as well as an academic benefit." J.A. 122. Furthermore, JCPS's integrated school system benefits the whole business community by educating students who will eventually become part of the highly diverse work force upon which the City's economic growth depends.

Given today's world economy, a company's ability to address racial and cultural diversity issues is increasingly important. Success in business often depends on how well a company can deal with diverse customers and business partners. *See* Deborah Ramirez & Jana Rumminger, *Symposium – Civil Right in the New Decade: Race, Culture, and the New Diversity in the New Millennium*, 31 Cumb. L. Rev. 481, 520 (2000-2001). Human resource management is critical in business administration, and a company's mishandling of issues of race and alleged discrimination in the workplace can result in significant reputation damage, low employee morale, and exposure to legal liability. *See* Vivek Wadhwa, *The True Cost of Discrimination*, Bus. Wk. Online, June 6, 2006. Given these concerns, companies are actively searching for ways to adapt to a racially and culturally diverse world, *see* Derald Wing Sue, *A Model for Cultural Diversity Training*, 70 Journal of Counseling & Development Sept.-Oct. 1991, at 99 (presenting a model for systematically incorporating cultural diversity in organizations), and the public school system can be an important partner in this regard.

This is particularly true given that "[t]he ability to control and influence behavior exists to an even greater extent in the classroom than in the workplace." *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 646 (1999). For this reason, schools can be a crucial venue in which to inculcate values of racial diversity and tolerance "early on, [when] students are still learning how to interact appropriately with their peers." *Id.* at 651. By the time students enter the workforce, it may be too late to eliminate prejudicial attitudes and unfair racial stereotypes. As Dr. Orfield testified, racially integrated schools can make students "very confident about their ability to live and work and participate in a society that's multiracial," and such confidence can only contribute to professional success. J.A. 144.

This point is well understood by Jefferson County's business leaders. For example, Sam Corbett, a businessman and a former school board member, testified that JCPS's racially diverse environment brings substantial benefit to the business community. J.A. 129-30. Mr. Corbett spoke to "the importance of racial integration in education as it prepares students for working in a diverse workplace." Pet. App. C-9.

Speaking as a "consumer of the product" of public education whose more than 200 employees also "consume the product either with their children or their grandchildren," Mr. Corbett testified from personal experience about the importance of elementary and secondary education in preparing students for a racially diverse workplace:

> [I]n my own business . . . today a third of our work force is white, a third of our work force is African-American, a third of our work force is Hispanic. Five years ago we had a significant Vietnamese population. I know

> we all talk this and it sounds good, but from a practical standpoint if we want our children to live and work in a world where they are going to be dealing with people who don't necessarily look and/or sound like they do, then what better way to prepare them for that than to be in that setting in the school building because they are going to get it in the workplace, and my company is a perfect example of how that's going to happen.

J.A. 129.

As Chief Judge Heyburn found, the lessons of racial tolerance, friendships with those of other races and elimination of racial stereotypes are "values [that] transcend [students'] experiences in public school and carry over into their relationships in college and the workplace." Pet. App. C-46. "As a result," the district court found, "these students are better prepared for jobs in a diverse workplace and exhibit greater social and intellectual maturity with their peers in the classroom and at their job." *Id.*

Petitioner baldly asserts that "for the most part, Louisville, Kentucky and/or the United States of America are indeed color-blind communities." Pet. 21. Indeed, *amici* wish that were true, but as this Court correctly observed only three years ago, racial discrimination still exists in our society, *Grutter*, 539 U.S. at 333, and greater Louisville is no exception. Our community continues to strive to achieve this worthy goal of a color-blind society, and the local school board has determined that racially integrated schools remain an important means to this end. Therefore, *amici* respectfully submit that the Board properly determined that JCPS's student assignment plan serves compelling purposes, including teaching students to thrive in the racially diverse

workplace, thereby contributing to the economic development of the entire community.

II. THE SCHOOL BOARD SHOULD BE ALLOWED TO FORMULATE A STUDENT ASSIGNMENT PLAN SUITABLE TO THE LOCAL COMMUNITY TO PROMOTE RACIAL INTEGRATION WITHOUT INTERFERENCE FROM A FEDERAL COURT

The Court, as a matter of both federalism and institutional competence, should accord deference to the decision made – based upon extensive community and educator input and involvement – by the locally elected and accountable school board in this case.

This Court has recognized that public school boards should be given discretion in fashioning secondary education policies that in other contexts might be deemed constitutionally suspect. To be sure, "school children do not shed their constitutional rights when they enter the schoolhouse." *Board of Educ. Of Ind. School Dist. No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 829 (2002) ("*Pottawatomie County*"). However, for example, "Fourth Amendment rights . . . are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." *Vernonia School Dist. 475 v. Acton*, 515 U.S. 646, 656 (1995). "In particular, a finding of individualized suspicion may not be necessary when a school conducts drug testing." *Pottawatomie County*, 536 U.S. at 830.

In addition to the Fourth Amendment cases, several decisions of this Court "recognize[] that the First Amendment rights of students in the public schools 'are not automatically coextensive with the rights of adults in other

settings,'" *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (quoting *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986)), but "must be 'applied in light of the special characteristics of the school environment,'" *Hazelwood*, 484 U.S. at 266 (quoting *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 506 (1969)). To that end, "[a] school need not tolerate student speech that is inconsistent with its 'basic educational mission,' . . . even though the government could not censor similar speech outside the school." *Hazelwood*, 484 U.S. at 266 (quoting *Bethel School Dist. No. 403*, 478 U.S. at 685). Thus, the Court has concluded that "[t]he determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board." *Bethel School Dist. No. 403*, 478 U.S. at 683.

This Court has deferred to school board decisions in these other constitutional contexts for at least two principal reasons. First, the Court recognizes, as a matter of federalism, that locally elected school boards under the authority of state governments are vested constitutionally with the responsibility to make policy decisions related to the education of secondary students in public schools.[4] *See Missouri v. Jenkins*, 515 U.S. 70, 132 (1995) ("When district courts seize complete control over the schools, they strip state and local governments of one of their most important governmental responsibilities, and thus deny their existence

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[4] For example, in Kentucky, a school board is empowered by state law to "do all things necessary to accomplish the purposes for which it is created." Ky. Rev. Stat. Ann. § 160.160(1). The members of the school board are locally elected. Id. § 160.210(5). The election is by secret vote in a non-partisan manner. Id. §§ 160.220, 160.230, 160.250 (1999). The board members meet regularly at least once a month. Id. § 160.270. The board members receive no salaries. Id. § 160.280.

as independent governmental entities."); *cf. Owasso Indep. School Dist. v. Falvo*, 534 U.S. 426, 435 (2002) (declining to adopt an interpretation of the Family Educational Rights and Privacy Act that would have allowed "federal power" to "exercise minute control over specific teaching methods and instructional dynamics in classrooms throughout the country").

Accordingly, the concept of local control over the operation of public schools is deeply rooted in our national tradition. *See Milliken v. Bradley*, 418 U.S. 717, 742 (1974) "(stating that [l]ocal control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages experimentation, innovation, and a healthy competition for educational excellence") (quotation marks and citation omitted); s*ee also Board of Educ. of Okl. City Pub. Sch., Indep. Sch. Dist. No. 89 v. Dowell*, 498 U.S. 237, 248 (1991) (*"Dowell"*). Because of these benefits, local autonomy is "essential both to the maintenance of community concern and support for public schools and to quality of the educational process." *Milliken*, 418 U.S. at 741-42. As Justice Kennedy has explained, local control of secondary educational policy is part of the essence of federalism:

> Preserving our federal system is a legitimate end in itself. It is, too, the means to other ends. It ensures that essential choices can be made by a government more proximate to the people than the vast apparatus of federal power.

Davis, 526 U.S. at 684-85 (1999) (Kennedy, J., dissenting).[5]

Second, the Court has deferred to public school boards with respect to many aspects of elementary and secondary education policy because, practically speaking, the local school board is better situated than a federal court to make such decisions. Simply put, "[f]ederal courts do not possess the capabilities of state and local governments in addressing difficult education problems." *Missouri v. Jenkins*, 515 U.S. at 132. "State and local school officials not only bear the responsibility for educational decisions, they also are better equipped than a single federal judge to make the day-to-day policy, curricula, and funding choices necessary to bring a school district into compliance with the Constitution." *Id.*

In part, local school boards are better equipped to make policy decisions because they are directly accountable to the people. As the Court has emphasized, "[w]hen the school district and all state entities participate in the absence of judicial supervision, they can be held accountable to the citizenry, to the political process, and to the courts in ordinary course." *Freeman v. Pitts*, 503 U.S. 467, 490 (1992).

In this case, Board members were elected to office, as are the majority of school board members nationwide. *Wood v.*

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[5] *See also Hazelwood*, 484 U.S. at 273 (stating that "education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges"); *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 226 (1985) (recognizing courts' "reluctance to trench on the prerogatives of state and local educational institutions"); *Goss v. Lopez*, 419 U.S. 565, 578 (1975) (stating that "[j]udicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint" and that "[b]y and large, public education in our Nation is committed to the control of state and local authorities").

Strickland, 420 U.S. 308, 320 n. 11 (1975). Thus, the Board can be held accountable to the citizenry in the political process. *See e.g., San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 413 F. Supp. 2d 1051, 1069 (N.D. Cal. 2005). To maintain a school board's political accountability, courts have, in recent years, often exercised self-restraint against interfering with a board's decision making process to promote desegregation. *See, e.g., Dowell*, 498 U.S. at 248 (stating that courts' intervention in local educational affairs to secure desegregation is temporary); *Hampton v. Jefferson County Bd. Of Educ.*, 102 F. Supp. 2d 358, 376 (W.D. Ky. 2000) (stating that "[i]t would be wrong for a federal court to impose [the federal court's preference between integrated school and neighborhood schools] upon an elected local school board as a matter of educational policy").

Furthermore, school boards generally have greater access to teachers, administrators and others with expertise about student assignment issues. *See generally Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley v. Rowley*, 458 U.S. 176, 208 (1982) (noting "courts lack the specialized knowledge and experience necessary to resolve persistent and difficult questions of educational policy") (citation and quotation marks omitted). Judicial restraint by a court is particularly appropriate in the context of elementary and secondary education given the sensitive and complicated task of guiding children through their formative years. *See Johnston-Loehner v. O'Brien*, 837 F. Supp. 388, 392 (M.D. Fla.), *aff'd*, 7 F. 3d 241 (11th Cir. 1993).

Thus, numerous cases recognize situations in which a school board's discretion should be "limited only by the requirement that any actions taken be in good faith, upon a sound, just and reasonable basis, [with] due regard for the public interest and consequences of its actions upon the children affected." *Swift v. Breckinridge County Bd. of*

Educ., 878 S.W.2d 810, 811 (Ky. Ct. App. 1994) (quotation marks and citation omitted). The adoption of a race-conscious student assignment plan to promote school desegregation should be afforded such deference by courts. *See generally Charlotte-Mecklenburg Bd. of Educ. v. Swann*, 402 U.S. 1, 16 (1971) (recognizing the school authority's broad power to formulate and implement educational policy to racially integrate public schools); *Deal v. Cincinnati Bd. of Educ.*, 369 F.2d 55, 61 (6th Cir. 1966) (recognizing that the local school authority may take steps, based on its sound judgment, to relieve racial imbalance in the school); *Clark v. Board of Educ. of Little Rock*, 705 F.2d 265, 271 (8th Cir. 1983) (stating that a school board may take into account the possibility of white students' flight and consequent resegregation to promote integration).

There is no evidence to suggest that the Board exceeded its authority, acted in bad faith, or violated any law or ordinance when it adopted the latest revision to the student assignment plan in 2001. Rather, after carefully considering its options and taking account of public opinion, the Board acted within its constitutionally sanctioned authority to implement an assignment plan that it believed would alleviate the vestiges of racial segregation in the best interests of the entire community. *See* Stipulation of Facts ¶ 134, reprinted at J.A. 58.

Given this reality, there is no justification for the Court to intervene in JCPS's decision-making process. When the district court dissolved the desegregation decree in 2000, that court found no evidence of racial discrimination within the school system, but it recognized the legitimacy of the Board's continuing good faith efforts to maintain racially integrated schools. *See Hampton*, 102 F. Supp. 2d at 365. The Board's decision to maintain the race-conscious student assignment plan was based on substantial community and

educator input. These circumstances should counsel in favor of deference to the Board's expertise in the information gathering, deliberation, and decision making process, and therefore, this Court should not disturb the Board's decision to maintain modified race-conscious student assignment plan.

Indeed, "[h]istory shows that, no matter what a school official chooses to do, someone will be unhappy," *Davis*, 526 U.S. at 682 (Kennedy, J., dissenting), but that is no reason for a federal court to interfere with a student assignment plan arrived at by a locally accountable school board after diligent study, solicitation of views from the community and the informed advice of school administrators and teachers. It is "essential" to "[r]eturn[] schools to the control of local authorities," *Freeman*, 503 U.S. at 490, and upholding this assignment plan is a step in that direction. As this Court has stated, "the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges." *Hazelwood*, 484 U.S. at 273.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

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Respectfully submitted,

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